

## **REMARKS**

Reconsideration of the application in view of the above amendments and the following remarks is respectfully requested.

### **I. Status of the Claims**

Claims 39-76 are pending in this application. In the Office Action mailed on July 31, claims 39-76 were rejected.

Claims 39-76 remain under prosecution.

### **II. Rejections Under 35 U.S.C. § 103**

The Examiner rejected claims 39, 62 and 76 under 35 U.S.C. § 103(a) as being obvious over Kolawa, et al., United States Patent No. 6,370,513 (hereinafter “Kolawa”) in view of Cosentino, et al., United States Patent No. 6, 290,646 (hereinafter “Cosentino”). The remaining claims are all dependent upon these three independent claims.

Each of the above claims requires the use of nutritional data in some form. Claim 39 requires: “obtaining nutritional data on each food item . . . evaluating a nutritional content of each food item . . verifying a nutritional value of each of said plurality of recipes” and “making nutritional information associated with said menu sets available. . .” Claim 62 requires: “a food item database containing nutritional data on each food item used in said plurality of recipes . . . a computer-implemented arrangement for obtaining said nutritional data . . . a computer-implemented arrangement for evaluating a nutritional content of each food item . . . a computer-implemented arrangement for verifying a nutritional value of each of said plurality of recipes based upon said verified nutritional values” and “a computer-implemented arrangement for

making nutritional information associated with said menu sets available . . .” Claim 76 requires: “obtaining nutritional data on each food item . . . evaluating a nutritional content of each food item . . . verifying a nutritional value of each of said plurality of recipes” and “making nutritional information associated with said menu sets available. . .”

Nutritional data is defined, at page 9, lines 13-17, as food composition data of the type made available by the U.S. Department of Agriculture at [www.nal.usda.gov/fnic/foodcomp](http://www.nal.usda.gov/fnic/foodcomp). Review of this website reveals the National Nutrient Database, which includes, but is not limited to, the following data types:

<b>Nutrient</b>
Moisture
Protein
Fat
Energy (Calories)
Carbohydrate (by difference)
Total dietary fiber
Total sugar
Calcium
Iron
Magnesium
Phosphorus
Potassium
Sodium
Zinc
Copper
Manganese
Selenium
Vitamin A (IU)
Vitamin A (RAE)
Alpha-carotene

Beta-carotene
Beta-cryptoxanthin
Lycopene
Lutein+zeaxanthin
Vitamin E (alpha-tocopherol)
Vitamin K (phylloquinone)
Vitamin C
Thiamin
Riboflavin
Niacin
Pantothenic acid
Vitamin B-6
Vitamin B-12
Dietary Folate Equivalents
Choline, total
Cholesterol
Total saturated fatty acids
Total monounsaturated fatty acids
Total polyunsaturated fatty acids

The Examiner cites Kolawa for the disclosure of nutritional information in columns 16 and 17 and also identifies the use of the term “chemical components” as further supporting the disclosure of this nutritional information at the same location. Further review of the Kolawa reference indicates that the term “chemical component” is to be interpreted as the list of ingredients of the recipe, and not of nutritional information as described above. Column 17, beginning at line 10, identifies the data entry procedure for creation of the recipe vectors. The computer program identifies a recipe and parses the ingredients, prompting the user to add any manually which are not included in the original. The specification precisely identifies “ingredients” as being the query for the chemical database in lines 16-21. Most critically, however is the **reason** that this data is being recorded and so carefully tracked. The purpose of the Kolawa system is to make recommendations for meals based on prior input data. These recommendations are based on the **tastes** of the family members, see column 2, lines 55-58. The system evaluates the recipes and ingredients based on the perceived tastes of the family member users and the projected **taste** of the food. Column 16, lines 20-33 support this conclusion, stating, *inter alia*, stating that each chemical component creates a particular type of **taste**, (**e.g. saltiness, bitterness, etc.**) A value is assigned based upon the users preference to such chemicals. The system analyzes the chemical components in the specified foods for compliance with the predefined likes and dislikes of the user.

Cosentino also does not provide any disclosure with respect to nutritional data or information, as defined above. At Column 2, lines 57-62, the reference discloses an apparatus which obtains certain physiological or wellness parameters of a patient and transmits them to a nutritionist or caregiver. In addition to the considerable disclosure relating to the electronic transmission of communication data, the reference identifies two types of substantive data being

generated by the device, weight and EKG. Weight is the only type of data identified for use or transmission to a nutritionist. Cosentino therefore does not make nutritional information available to nutritionists, as erroneously identified by the Examiner.

The rejections of all of the pending claims of the application are therefore improper, in that there is no foundation in either of the cited references for the disclosure of nutritional information. It is further improper to combine these references, as Cosentino lacks any teaching or suggestion whatsoever relating to nutritional information of any kind.

Applicant has also corrected two typographical errors in the specification.

### **CONCLUSION**

Based on the foregoing remarks, Applicant respectfully submits that claims 39-76 are in condition for allowance.

Respectfully submitted,

METZ LEWIS LLC

By 

Barry I. Friedman, Reg. No. 33,695

11 Stanwix Street, 18<sup>th</sup> Floor

Pittsburgh, Pennsylvania 15222

Attorneys for Applicant

(412) 918-1100